Tan Tian Meng lwn Pentadbir Tanah Daerah Bentong

MAHKAMAH TINGGI (TEMERLOH) — RUJUKAN TANAH NO CB-15–6–02 TAHUN 2023
ROSLAN MAT NOR H
22 JANUARI 2024

Undang-Undang Tanah — Pengambilan tanah — Pampasan — Bantahan terhadap amaun pampasan — pemohon memfailkan permohonan rujukan tanah — Sama ada amaun pampasan yang diberikan oleh pentadbir tanah berkaitan dengan kesan mudarat dan pemisahan tanah adalah wajar — Akta Pengambilan Tanah 1960 s 38

Ini adalah permohonan pemohon di bawah s 38 Akta Pengambilan Tanah 1960 ekoran daripada perintah Pentadbir Tanah Daerah Bentong yang telah memutuskan amaun pampasan adalah sebanyak RM1,698,620.20. Pemohon telah tidak berpuas hati dengan nilai pampasan tersebut dan memfailkan permohonan rujukan tanah ini. Pemohon menyatakan bahawa amaun pampasan yang diberikan oleh Pentadbir Tanah berkaitan dengan kesan mudarat dan pemisahan tanah yang dialami oleh pemohon telah tidak dilakukan dengan sewajarnya dan pengambilan tanah tersebut menyebabkan terputusnya hubungan di antara tanah pemohon dengan bahagian A dan B yang mengganggu jalan masuk ke tanah tersebut. Sebaliknya, responden menyatakan bahawa: (a) masih terdapat akses oleh pemohon walaupun terpisah dari jalan dan oleh itu tidak timbul isu pemisahan yang tidak membolehkan tanah tersebut diakses langsung atau terputus langsung aksesnya; dan (b) ini juga tidak dapat menyokong dakwaan pemohon bahawa ia telah mengurangkan nilai hartanah tersebut.

Diputuskan:

(1) Jumlah pampasan yang sewajarnya perlu diberikan kepada pecah pisah tersebut. Perhubungan di antara bahagian A dan bahagian B adalah terkunci dengan pengambilan tanah tersebut. Ia sudah tentu akan mengurangkan nilai tanah tersebut. Ia juga tidak digambarkan jumlah pampasan tersebut di dalam award yang diberikan oleh Pentadbir Tanah. Jumlah sebanyak RM40,259.08 adalah wajar diberikan kepada pemohon di bawah pecah pisah ini (lihat perenggan 29).

(2) Tiada sebarang keterangan yang jelas ditunjukkan berkenaan kemudaratan yang dialami oleh pemohon ekoran daripada pengambilan tanah ini. Ia hanyalah merupakan andaian-andaian serta kemungkinan yang akan dialami ekoran daripada pengambilan tanah tersebut. Ia tidak mencukupi untuk menunjukkan bahawa terdapat kesan mudarat dalam

pengambilan tanah ini. Oleh itu, tiada kesan mudarat yang boleh dijadikan asas untuk diberikan pampasan berkenaannya (lihat perenggan 32).

[English summary

This was the applicant's application under s 38 of the Land Acquisition Act 1960 following the order of the Bentong District Land Administrator who had decided the amount of compensation was RM1,698,620.20. The applicant was not satisfied with the amount of the compensation and filed this land reference application. The applicant stated that the amount of compensation given by the land administrator relating to the injurious affection and the severance of the land experienced by the applicant was not done appropriately and that the acquisition of the land caused a disconnection between the applicant's land in Part A and B which interfered with the access to the land. On the other hand, the respondent stated that: (a) there was still access by the applicant even though it was severed from the road and therefore there was no severance issue that did not allow the land to be directly accessed or access was cut off; and (b) this also could not support the applicant's claim that it had reduced the value of the property.

Held:

(1) The appropriate amount of compensation should be given for the severance. The connection between part A and part B was locked with the acquisition of the land. It would certainly reduce the value of the land. It was also not described the amount of the compensation in the award given by the land administrator. An amount of RM40,259.08 should be given to the applicant under the severance (see para 29).

(2) No clear evidence had been shown regarding the harm suffered by the applicant as a result of the acquisition of the land. It was only the assumptions and possibilities that would be experienced as a result of the acquisition of the land. It was not enough to show that there was injurious affection in the acquisition of the land. Therefore, there was no injurious affection that could be used as a basis for compensation in this regard (see para 32).]

Kes-kes yang dirujuk

Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat [2021] 4 MLJ 1; [2021] 3 CLJ 1, MP (dirujuk)

Datuk Dr Murugasu Sockalingam & Anor v Suprintendent of Lands and Survey, First Division, Sarawak [1983] 2 MLJ 336, MP (diikut)

Lembaga Lebuhraya Malaysia v Sime Darby Plantation Bhd & Ors [2022] 5 MLJ 318, MR (dirujuk)

Ng Tiou Hong v Collector of Land Revenue, Gombak [1984] 2 MLJ 35, MP (dirujuk)
Zainal Azahar bin Mohd Zain v Pentadbir Tanah Daerah Seberang Perai Utara, Pulau Pinang [2017] 3 MLJ 453, MR (dirujuk)

Undang-undang yang dirujuk

Akta Keretapi 1991
Akta Pengambilan Tanah 1960 Jadual Pertama, perenggan 1, 1(1)(a), Borang N, O
Peraturan-Peraturan Keretapi (Zon Perlindungan Keretapi) 1998

Zeffree bin Zainuddin (Zeffree Azmi) bagi pihak pemohon.
Azizah bt Ahmad (Pejabat Penasihat Undang-Undang Negeri Pahang) bagi pihak responden.

Roslan Mat Nor H:

PENDAHULUAN

[1] Ini adalah rujukan tanah yang berkaitan dengan pengambilan tanah untuk Projek Laluan Rel Pantai Timur (East Coast Rel Link-ECRL) bagi Daerah Bentong, Negeri Pahang (Fasa 1 Jajaran Utama). Ia melibatkan Lot No PT 26167, No Hakmilik GM 4141, Mukim Bentong, Daerah Bentong, Negeri Pahang. Luas lot ini ialah 1.106 hektar. Jumlah yang diambil adalah sebanyak 0.3242 hektar. Ia adalah tanah pertanian dan syarat nyata dalam hakmilik tersebut adalah hendaklah digunakan untuk tanaman getah sahaja.

[2] Pentadbir Tanah telah mengadakan inkuiri pengambilan tanah ini dan telah memutuskan pampasan yang diberikan adalah berkaitan tanah ialah RM389,040, kos pecah pisah (*severance*) adalah RM187,632 dan kos kesan mudarat (*injurious affection*) adalah RM93,816. Jumlah keseluruhan pampasan yang diberikan kepada pemohon adalah RM670,488. Selain daripada itu Pentadbir Tanah juga telah mengawardkan kos bicara sebanyak RM400.

[3] Penelitian kepada nota prosiding di hadapan Pentadbir Tanah adalah didapati bahawa nilai hartanah yang diambil kira dalam menentukan jumlah yang sewajarnya adalah pada kadar RM1.2 juta sehektar.

BANTAHAN PEMOHON

[4] Dalam hujahan yang dikemukakan oleh pihak pemohon adalah dinyatakan bahawa perbandingan nilai yang diberikan oleh Pentadbir Tanah adalah tidak wajar. Ini adalah disebabkan pemohon menggunakan lima perbandingan sebaliknya Pentadbir Tanah telah menggunakan lapan

perbandingan. Perbandingan tersebut adalah tidak wajar dipertimbangkan oleh Pentadbir Tanah. Oleh itu lot perbandingan yang sepatutnya yang diambil kira adalah lima lot iaitu Lot 8410, Lot 8442, Lot 15712, Lot 9052 dan Lot 8422.

[5] Dalam erti kata lain Pentadbir Tanah dikatakan gagal untuk menggunakan garis panduan yang diberikan di bawah perenggan 1(1)(a) Jadual Pertama Akta Pengambilan Tanah 1960. Sebaliknya responden berhujah bahawa perbandingan yang dibuat oleh Pentadbir Tanah adalah teratur berdasarkan kepada perbandingan yang wajar dibuat.

ANALISA

[6] Penelitian kepada Borang N yang dikemukakan kepada Pentadbir Tanah Daerah Bentong oleh pemohon dan Borang O yang dikemukakan oleh Pentadbir Tanah Daerah Bentong kepada mahkamah ini menunjukkan bahawa bantahan dikemukakan terhadap amaun pampasan berkaitan dengan nilai pasaran sebenar bagi tanah tersebut, pampasan yang setimpal untuk pecah pisah dan kegagalan Pentadbir Tanah memberikan pampasan yang setimpal terhadap kesan mudarat.

HARGA PASARAN

[7] Akta Pengambilan Tanah 1960 telah memperihalkan tatacara penilaian harga pasaran seperti yang dinyatakan di bawah Jadual Pertama Akta Pengambilan Tanah 1960 seperti berikut:

> FIRST SCHEDULE
>
> PRINCIPLES RELATING TO THE DETERMINATION OF COMPENSATION
>
> 1. Market value
>
> (1) For the purposes of this Act the term 'market value' where applied to any scheduled land shall mean the market value of such land —
>
> (a) at the date of publication in the Gazette of the notification under section 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under section 8 in respect of all or some part of the land in the locality specified; or
>
> (b) in other cases, at the date of the publication in the Gazette of the declaration made under section 8.
>
> (1A) In assessing the market value of any scheduled land, the valuer may use any suitable method of valuation to arrive at the market value provided that regard may be had to the prices paid for the recent sales of lands with similar characteristics as the scheduled land which are situated within the vicinity of the scheduled land and

with particular consideration being given to the last transaction on the scheduled land within two years from the date with reference to which the scheduled land is to be assessed under subparagraph (1).

(1B) Where only a part of the land is to be acquired, the market value of the scheduled land shall be determined by reference to the whole land as shown in the document of title of the scheduled land and after having regard to the particular features of that part.

(1C) In assessing the market value of any scheduled land, regard shall not be had to the evidence of any sales transactions effected after the date with reference to which the scheduled land is to be assessed under subparagraph (1).

(1D) Where the scheduled land to be acquired is held under a title for a period of years, in assessing the market value, regard may be had to the date of expiry of the lease as shown in the document of title, but regard shall not be had to the likelihood of a subsequent alienation to the person or body who is the proprietor thereof immediately before the expiry of the lease.

(2) In assessing the market value —

(a) the effect of any express or implied condition of title restricting the use to which the scheduled land may be put; and

(b) the effect of any prohibition, restriction or requirement imposed by or under the Antiquities Act 1976 [Act 168] in relation to any ancient monument or historical site within the meaning of that Act on the scheduled land, shall be taken into account.

(2A) In assessing the market value of any scheduled land which is Malay reservation land under any written law relating to Malay reservations, or a Malay holding under the Malay Reservations Enactment of Terengganu [Terengganu En. No. 17 of 1360 (A.H)], or customary land in the State of Negeri Sembilan or the State of Malacca, the fact that it is such Malay reservation land, a Malay holding, or customary land shall not be taken into account except where the scheduled land is to be devoted, after the acquisition, solely to a purpose for the benefit of persons who are eligible to hold the land under such written law.

(2B) (Deleted by Act A999: s 33)

(2BA) In assessing the market value of any scheduled land, where the information provided by the State Director of Town and Country Planning or the Commissioner of the City of Kuala Lumpur, as the case may be, under section 9A indicates that the scheduled land is within a local planning authority area, then the land shall be assessed by having regard to the specific land use for that land as indicated in the development plan.

(2C) In assessing the market value of any scheduled land which but for the acquisition would continue to be devoted to a purpose of such a nature that there is no general demand or market for that purpose, the assessment shall be made on the basis of the reasonable cost to the proprietor of the scheduled land of using or purchasing other land and devoting it to the same purpose to which the scheduled land is devoted, if the Land Administrator is satisfied that this is bona fide intended by the proprietor of the scheduled land.

(2D) In assessing the market value of any scheduled land which is an estate land, or forms part of an estate land, the market value of such land shall be determined taking into consideration section 214A of the National Land Code.

[(2D) Am. Act A1517: s 42]

(3) If the market value of any scheduled land has been increased, or is currently increased, in either of the following ways, such increase shall be disregarded:

(a) an increase by means of any improvement made by the owner or his predecessor in interest within two years before the declaration under section 8 was published in the Gazette, unless it be proved that such improvement was made bona fide and not in contemplation of proceedings for the acquisition of the land;

(b) an increase by reason of the use of the land, or of any premises thereon, in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health.

(c) (Deleted by Act A388).

(3A) The value of any building on any land to be acquired shall be disregarded if that building is not permitted by virtue of —

(a) the category of land use; or

(b) an express or implied condition or restriction,

(c) to which the land is subject or deemed to be subject under the State land law.

(4)–(5) (Deleted by Act A388).

2. Matters to be considered in determining compensation In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following matters and no others:

(a) the market value as determined in accordance with section 1 of this Schedule;

(b) any increase, which shall be deducted from the total compensation, in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

(c) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of severing such land from his other land;

(d) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land

(e) Administrator's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner;

(f) if, in consequence of the acquisition, he is or will be compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and

(g) where only part of the land is to be acquired, any undertaking by the State Authority or by the Government, person or corporation on whose behalf the land is to be acquired, for the construction or erection of roads, drains, walls, fences or other facilities benefiting any part of the land left unacquired, provided that the undertaking is clear and enforceable.

3. Matters to be neglected in determining compensation In determining the amount of compensation to be awarded for any scheduled land acquired under this Act the following matters shall not be taken into consideration:

(a) the degree of urgency which has led to the acquisition;

(b) any disinclination of the person interested to part with the land acquired;

(c) any damage sustained by the person interested which, if caused by a private person, would not be a good cause of action;

(d) any depreciation in the value of the land acquired likely to result from the use to which it will be put when acquired;

(e) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

(f) any outlay on additions or improvements to the land acquired, which was incurred after the date of the publication of the declaration under section 8, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair and unless, in the case of agricultural land, it is any money which has been expended for the continuing cultivation of crops on it.

(g) (g)-(h) (Deleted by Act A388).

4. Limitation on award

Where at any inquiry made by the Land Administrator under section 12, or in any statement in writing required by the Land Administrator under subsection 11(2), any person interested has:

(a) made a valuation of or claimed compensation for any land or any interest therein, such person shall not at any time be awarded any amount in excess of the amount stated or claimed;

(b) refused, or has omitted without sufficient reason to be allowed by a Judge, to make a claim to compensation, such person shall not at any time be awarded any amount in excess of the amount awarded by the Land Administrator.

[8] Selain daripada itu garis panduan yang diputuskan oleh mahkamah atasan berkenaan dengan tatacara penentuan pampasan berkaitan dengan harga pasaran juga menjadi suluh panduan untuk mahkamah menimbangkan

berkenaan harga pasaran bagi maksud pengambilan tanah di bawah Akta Pengambilan Tanah 1960. Ini telah diutarakan oleh Mahkamah Persekutuan dalam kes *Ng Tiou Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 35.

[9] Sementara itu Mahkamah Persekutuan juga telah menyatakan berkenaan dengan sejauh manakah perenggan 1 Jadual Pertama Akta tersebut perlu digunakan oleh mahkamah dalam menentukan harga pasaran. Ini dinyatakan dalam kes *Amitabha Guha (as beneficiary for the estate of Madhabendra Mohan Guha) v Pentadbir Tanah Daerah Hulu Langat* [2021] 4 MLJ 1; [2021] 3 CLJ 1 seperti berikut:

> [47] In the light of the ruling of this court in *Semenyih Jaya*, the market value rule in para 1 of the First Schedule must not be construed strictly. As such, acquisition comparables may also be considered in assessing market value provided that regard be had to sale comparables transacted within the last two years of the date of the publication of: (a) a preliminary notice of likely acquisition under s 4 in Form A; and or (b) a declaration of intended acquisition under s 8 in Form D, as the case may be.

[10] Penilai swasta telah membuat perbandingan dengan lima bukti jual beli iaitu bagi Lot 8410, Lot 8442, Lot 15712, Lot 9052 dan Lot 8422. Sementara itu penilai kerajaan pula menggunakan lapan bukti jual beli iaitu bagi Lot 8378, Lot 1093, Lot 1095, Lot 2242, Lot 26108, Lot 26088, Lot 7549 dan Lot 26137. Penilai swasta telah mendapatkan penyelarasan harga jualan tanah-tanah tersebut pada kadar RM2,402,808.99 hingga RM4,013,377.93 sehektar. Sementara itu penilai kerajaan pula mendapati bahawa harga adalah di antara RM1,047,733.51 hingga RM1,431,467.96 sehektar.

[11] Mahkamah ini telah meneliti peta lokasi bagi melihat kedudukan lot-lot tersebut bagi mempertimbangkan sama ada perbandingan-perbandingan tersebut adalah wajar bagi mendapatkan penyelarasan pampasan berkaitan dengan nilai pasaran tanah yang terlibat dalam pengambilan tanah dalam kes ini.

[12] Pengapit kerajaan telah bersetuju dengan memilih perbandingan kelima iaitu Lot 26108 GRN 45548 Mukim Daerah Bentong sebagai perbandingan terbaik kerana transaksi terkini dan kawasan yang sama dan telah dibuat penyelarasan oleh pengapit kerajaan dan menyatakan bahawa selepas penyelarasan kadar nilai adalah RM1.1 juta dan dalam kes ini Pentadbir Tanah telah memberikan pampasan sebanyak sebanyak RM1.2 juta sehektar. Oleh itu pengapit kerajaan berpendapat tiada tambahan pampasan wajar diberikan dan award Pentadbir Tanah dikekalkan.

[13] Sementara itu pengapit swasta pula berpandangan bahawa perbandingan yang dibuat oleh penilai kerajaan iaitu lapan bukti jual beli telah diambil kira oleh pengapit swasta iaitu empat daripada Jabatan Penilaian dan Perkhidmatan Harta ('JPPH') dan penilai swasta yang mana pengapit swasta mendapati bahawa nilai yang wajar ialah di antara RM1,062,292.33 sehektar hingga RM2,754,491.02 sehektar dan mencadangkan bahawa pampasan bagi tanah tersebut adalah dengan mengambil kira nilai RM1.16 juta sehektar. Dalam erti kata lain terdapat perbezaan di antara pandangan yang dikemukakan oleh pengapit kerajaan dan pengapit swasta dalam lingkungan perbezaan sebanyak lebih kurang RM500,000.

[14] Dalam kes ini mahkamah dalam mempertimbangkan pandangan kedua-dua pengapit, mahkamah bersetuju dengan pandangan pengapit kerajaan. Ini adalah disebabkan perbandingan yang dilakukan oleh pengapit kerajaan adalah terhadap tanah yang mempunyai nilai dan syarat-syarat yang sama dengan tanah yang dipertikaikan ini. Ia juga mengambil kira bukti jual beli yang berlaku dalam tanah yang diperbandingkan tersebut. Pada masa yang sama mahkamah juga melihat kepada aktiviti-aktiviti yang terdapat di tanah tersebut dan membandingkannya dengan aktiviti-aktiviti yang dilakukan di atas tanah ini. Ia bagi melihat sama ada nilai pasaran tanah tersebut adalah satu yang setimpal dan munasabah bagi dijadikan asas untuk penilaian harga pasaran tanah tersebut.

[15] Mahkamah juga mengambil kira urus niaga yang melibatkan tanah-tanah yang berhampiran dengan tanah yang diambil. Ini bagi membantu mahkamah untuk menilai harga pasaran tanah tersebut. Apa yang jelas akhirnya mahkamah perlu melihat keseluruhan faktor-faktor di atas dengan mengambil kira panduan dalam Jadual Pertama Akta Pengambilan Tanah 1960 bagi mencapai satu penentuan harga pasaran bagi tanah yang diambil ini.

[16] Jika diteliti Lot 8378 ia adalah tanah yang dikategorikan sebagai pertanian dan mempunyai syarat nyata tanaman getah sahaja. Ia juga terlibat dalam pengambilan tanah untuk tujuan Projek Laluan Rel Pantai Timur (East Coast Rel Link-ECRL). Catatan juga menunjukkan bahawa terdapatnya pindah milik pada 9 September 2021 yang melibatkan jumlah harga RM1,047,733.51 sehektar. Ia adalah terletak di lapisan pertama Jalan Kuala Lumpur lama iaitu jalan utama. Sementara itu bagi Lot 1093 pula ia juga berada di lapisan pertama jalan utama dan syarat kategori adalah pertanian untuk tanaman getah sahaja yang telah dinilaikan harganya sebanyak RM1,007,580.85 sehektar. Bagi Lot 1095 adalah kategori tanah pertanian untuk getah sahaja. Ia juga berada di lapisan pertama jalan utama yang telah dinilaikan RM1,431,467.95 sehektar. Sementara itu, bagi Lot 2242 tanah tersebut juga terlibat dalam Projek Laluan Rel Pantai Timur (East Coast Rel

Link-ECRL). Ia dikategorikan sebagai tanah pertanian untuk tanaman getah sahaja dan nilaiannya adalah RM1,062,292.33 sehektar. Seterusnya bagi Lot 26108 tiada kategori dan nilai tanah adalah RM1,372,369.62 sehektar. Sementara bagi Lot 26088 adalah dalam kategori tanah pertanian tanaman getah dan jumlah nilaiannya adalah RM708,089.93 sehektar iaitu lapisan pertama Lebuh Raya Kuala Lumpur-Karak dan tanah ini adalah mempunyai rupa bumi berbukit-bukit. Bagi Lot 7549 tanah yang tiada kategori harganya adalah RM867,414.25 sehektar berada di lapisan pertama jalan utama dan berbentuk empat segi bujur dan mempunyai rupa bumi berbukit. Sementara Lot 26137 adalah kategori pertanian, syarat nyata adalah tanaman dusun sahaja. Ia berada di lapisan pertama Lebuh Raya Kuala Lumpur-Karak berbentuk empat segi bujur dan mempunyai rupa bumi berbukit-bukit dan nilaiannya adalah RM864,502.75 sehektar.

[17] Sementara itu penilai swasta telah membuat perbandingan dengan tanah-tanah yang melibatkan Lot 8410 yang merupakan tanah pertanian nilaian RM920,000 sehektar. Sementara Lot 9052 adalah tanah pertanian. Nilai tanah tersebut adalah RM2.35 juta. Bagi Lot 8422 juga dikategorikan tanah pertanian dan nilaiannya adalah RM2.65 juta. Lot 15712 juga tanah pertanian nilaiannya adalah RM920,000. Bagi Lot 8442 kategorinya adalah tanah pertanian nilaiannya adalah RM2.5 juta.

[18] Adalah didapati bahawa perbandingan yang dibuat oleh penilai swasta dan penilai kerajaan terdapat tanah yang sama telah dirujuk yang dijadikan sebagai asas kepada harga pasaran bagi tanah yang diambil ini. Namun demikian mahkamah mendapati bahawa kedudukan tanah tersebut adalah jauh daripada tanah yang menjadi isu dalam kes ini, iaitu lebih kurang 20 km daripada tanah yang menjadi isu dalam kes ini. Mahkamah mendapati terdapat terdapat transaksi jual beli yang berdekatan yang tidak diambil kira oleh penilai pihak pemohon. Oleh itu mahkamah berpendapat bahawa perbandingan yang sesuai digunakan ialah perbandingan bagi Lot 26108. Ini adalah disebabkan lokasi Lot 26108 tersebut berada berhadapan dengan Lebuh Raya Kuala Lumpur-Karak dan ia adalah merupakan lapisan pertama Lebuh Raya Kuala Lumpur-Karak. Ia juga merupakan tanah pertanian getah dan terdapat jalan masuk. Begitu juga lot ini adalah sebanding dengan tanah yang diambil alih ini. Kadar nilai selepas perlarasan pada hemat mahkamah adalah lebih kurang RM1.1 juta sehektar dan Pentadbir Tanah telah memberikan award pampasan tanah pada kadar RM1.2 juta sehektar. Ia dalah suatu perbandingan yang wajar.

[19] Oleh itu mahkamah ini berpendapat keputusan Pentadbir Tanah berkenaan dengan nilai pasaran yang dijadikan asas untuk pampasan sebanyak RM1.2 juta sehektar tersebut adalah sesuatu yang tidak wajar diganggu oleh

mahkamah ini. Keputusan Pentadbir Tanah yang memutuskan bahawa pampasan adalah RM389,040 adalah dikekalkan.

KESAN MUDARAT (*INJURIOUS AFFECTION*)

[20] Penelitian kepada pelan tanah adalah jelas menunjukkan bahawa terdapatnya kesan tanah baki yang terjejas secara fizikal. Ini adalah disebabkan terdapatnya bentuk dan saiz tanah tersebut telah berubah ekoran daripada pengambilan tanah ini. Ini dapat dilihat melalui kesan daripada pengambilan tanah ini ia menyebabkan landasan keretapi ECRL tersebut melalui di tengah-tengah tanah ini dan ia menyebabkan berlaku pemisahan dua tanah tersebut yang dilalui oleh landasan keretapi ECRL tersebut yang mana darjah keparahannya adalah dalam 20%. Mahkamah ini berpendapat jumlah 20% yang diambil kira oleh Pentadbir Tanah itu adalah wajar dan tidak memerlukan gangguan mahkamah ini. Dalam hal ini mahkamah juga mengambil kira pandangan yang dinyatakan dalam kes *Zainal Azahar bin Mohd Zain v Pentadbir Tanah Daerah Seberang Perai Utara, Pulau Pinang* [2017] 3 MLJ 453 yang menyatakan bahawa mahkamah yang mendengar rujukan tanah perlu mempertimbangkan kesan mudarat dan pecah pisah. Ini dinyatakan seperti berikut:

> [4] We are of the view that in a situation where an acquisition exercised of part of a land would have effect on the remaining and existing land then the issue of injurious affection would be relevant. It must be borne in mind that the constitutional rights of the respondent was being taken away by the provisions of the LAA and therefore those provisions must be strictly adhered to. We refer to the First Schedule of the Act, and in particular para 2(d) and we quote:
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> 2 Matters to be considered in determining compensation
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> In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following matters and no others:
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> (a) the market value as determined in accordance with section 1 of this Schedule;
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> (b) any increase, which shall be deducted from the total compensation, in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;
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> (c) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of severing such land from his other land;
>
> (d) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner;

(e) if, in consequence of the acquisition, he is or will be compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and

(f) where only part of the land is to be acquired, any undertaking by the State Authority, or by the Government, person or corporation on whose behalf the land is to be acquired, for the construction or erection of roads, drains, walls, fences or other facilities benefiting any part of the land left unacquired, provided that the undertaking is clear and enforceable.

[5] We are of the view that para 2(d) clearly provides that the question for severance and injurious affection can be raised. The only issue for us to consider now is whether the High Court at a reference stage can consider the question of severance and injurious affection. We refer to the decision of the Federal Court in *Collector of Land Revenue v Looi Lam* [1981] 1 MLJ 300 where it was held:

> As para 2(d) of the First Schedule to the Land Acquisition Act 1960, refers to the damage 'likely to be sustained' by the person interested, the damages for injurious affection to the house in this case could be claimed and was rightly awarded in the course of a reference to the High Court under the Act.

We also refer to the judgment of His Lordship Suffian LP (as he then was) and we quote p 302 para E-G:

> To allow the owner to pursue her claim in the course of the reference which was not heard until May 30, 1978, ie nearly eight years after the completion of the river deviation work on December 12, 1970, was, Datuk Mansor argued, unfair to Government; because by then any suit by the owner would certainly have been time-barred under the Public Authorities Protection Ordinance 1948, which prescribed a one-year time limit, and allowing consideration of this claim in the course of the reference was tantamount to reviving a time-barred cause of action. What the owner should have done, it was submitted, was to sue Government separately for this damage.
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> With respect we do not agree. In our judgment the learned judge was right in ruling that the owner need not have sued separately for this damage and that the court has power to consider and adjudicate on her claim in the course of the reference. With respect we agree with the law stated by the Calcutta Court in *RH Wernicke v The Secretary of State for India in Council*.
>
> There Government acquired part of a tea garden for the purpose of extending a rifle range near Darjeeling. The owners were left with about eight acres of tea land behind the butts where it was extremely unsafe to work when firing was going on. They claimed injurious affection of these eight acres. Counsel for Government opposed the claim, arguing that any damage should be the subject of a suit.

Richardson J at pp 1059–1060 disposed of this argument as follows:

> There remains the claim for injurious affection which is laid as Rs 2,540. It is said that the rifle range will interfere, with the working of eight acres of land behind the butts and I think that there can be no doubt as to this. It will not be safe to

put coolies on the land when the range is being used. Mr Sinha for the Government contended that the contemplated injury was contingent, that it could only arise from the negligent use of the range and that the tea garden was not entitled to compensation now but would be entitled to a remedy by suit when the injury occurred. The case to which he referred *His Highness the Gaekwar of Baroda v Gandhi Kachrabhai Kasturchand* is not an adequate support for this proposition and the learned counsel for the claimants cited good authority for the view that the tea garden is entitled to compensation now even if the injury which is contemplated be of the nature of an actionable nuisance (Land Acquisition Act, s 23, clause fourthly) *Croft v L & NW Ry Co* and *Cowper Essex v The Local Board of Acton*.

As to Datuk Mansor's argument that to allow consideration of the owner's claim in the course of reference was tantamount to reviving a time-barred claim, it cannot be said that the owner has been guilty of delay at all. The collector made his award on January 30, 1970; and the owner promptly by Form N asked for her objection to be referred to the High Court. This form, be it noted, was dated March 4, 1970, one month and a few days later and certainly well within the one-year limit prescribed by the Protection of Public Authorities Ordinance 1948. Moreover, as can be seen from this Form at p 28 of the appeal record, the owner specifically gave notice that she intended to make a claim under para 2(d) of the First Schedule.

An additional reason for holding that the owner's claim under this paragraph may be considered in the course of the reference is the absence from the Land Acquisition Act 1960, of a section corresponding to s 31 of the FMS Land Acquisition Enactment (FMS Cap 140) which provided that when an owner had made a claim to the collector, the High Court in a reference might not award a sum exceeding the sum so claimed: this implies that the Legislature when enacting the Act desired to let the High Court have in a proper case a free hand to award more than the sum claimed before the collector. What case can be more proper than this one where at the time of enquiry there was only the possibility of damage and soon after the completion of the river deviation work there was indeed damage and extensive damage at that?

Finally, it is in the public interest that as many related matters in controversy as possible should be ventilated and determined in the same proceedings — to save time and costs.

[6] We are therefore of the view the learned judge erred in law in refusing to consider the question of severance and injurious affection at the stage when the matter was referred to the learned judge by way of reference under the LAA.

[21] Pada masa yang sama mahkamah juga harus mengambil kira berkenaan dengan kesan daripada pengambilan tanah tersebut terhadap pemilik tanah yang tidak lagi menikmati tanah tersebut seperti sebelum ianya diambil oleh pihak berkuasa. Ini bagi menentukan bahawa terdapatnya kesan mudarat ekoran daripada pengambilan tanah tersebut. Dalam kes ini mahkamah ini

mengambil kira berkenaan dengan kesan mudarat tersebut. Namun apa yang menjadi pertimbangan ialah berapakah kadar yang wajar bagi kesan kemudaratan tersebut.

[22] Di samping itu mahkamah juga meneliti kes *Datuk Dr Murugasu Sockalingam & Anor v Suprintendent of Lands and Survey, First Division, Sarawak* [1983] 2 MLJ 336 yang memberi garis panduan ujian yang perlu digunakan bagi menentukan sama ada kesan mudarat boleh dipertimbangkan. Mahkamah Persekutuan menyatakan seperti berikut:

> The learned judge rejected the substantial claim for diminution of value due to severance and injurious affection and the contention of the objectors' valuer that an area of approximately 12.35 acres would be rendered totally useless as the land happened to be in the flight path of incoming and outgoing aircraft as he found no reliable evidence to support such a contention.
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> It was not in dispute that the remaining portion of Lot 614 had the potentiality of being developed for housing purposes but that such potentiality was not yet ripe at the material date. The reason was that residential lots along Airport Road and Penrissen Road near the subject land had not yet been developed by 1972. Although the valuers from both sides did not dispute this potentiality they disagreed on the time factor for the potentiality to emerge. For these reasons the learned judge was perfectly right to stress that despite the severance, the potentiality of the remaining portion of the subject land was not and did not seem to have been affected.
>
> The question of injurious affection found some support from the learned judge, because after acquisition of a portion of Lot 614, the frontage of the subject land was reduced by slightly less than one-third in length. Despite this, the remaining area still retains and possesses a very substantial frontage into Penrissen Road and would still be viable for development as a self-contained housing estate.

[23] Ini juga telah dinyatakan oleh Mahkamah Rayuan dalam kes *Lembaga Lebuhraya Malaysia v Sime Darby Plantation Bhd & Ors* [2022] 5 MLJ 318 yang menerima pakai ujian dalam kes *Datuk Dr Murugasu Sockalingam & Anor*.

[24] Dalam laporan penilaian yang dikemukakan oleh pemohon berkaitan dengan tuntutan kesan mudarat telah dinyatakan bahawa kedudukan landasan keretapi ECRL dengan bakal dibina dengan ketinggian 34 meter hingga 37 meter beserta dengan tiga tiang yang dibina di antara kedua-dua bahagian di bahagian tengah hartanah berkenaan akan menyebabkan pandangan hartanah tersebut akan terhalang. Selain daripada itu juga dikatakan bahawa pembangunan hartanah berkenaan sama ada secara berasingan atau sepadu adalah sukar kerana hartanah tersebut telah terpisah. Ia disebabkan tanah tersebut telah menjadi memanjang dan kecil. Oleh yang demikian ia akan menjejaskan pembangunan tanah tersebut pada masa akan datang disebabkan penggunaan tanah tersebut adalah tertakluk kepada pelbagai syarat di antaranya ialah Peraturan-Peraturan Keretapi (Zon Perlindungan Keretapi)

1998 dan Akta Keretapi 1991. Sebaliknya laporan penilaian daripada JPPH berkenaan perkara ini pula telah menyatakan bahawa tiada sebarang kesan mudarat yang dialami oleh pihak pemohon. Keterangan tiada dikemukakan untuk membuktikan kewajaran pampasan untuk tujuan kemudaratan ini mengikut kadar yang diminta oleh pemohon. Mahkamah ini juga telah meneliti pandangan kedua-dua pengapit kerajaan dan pengapit swasta yang bersepakat bahawa tiada sebarang keterangan yang ada bagi membolehkan mahkamah ini mempertimbangkan tuntutan kesan mudarat mengikut kadar yang diusulkan oleh pemohon.

[25] Mahkamah ini berpendapat tuntutan kemudaratan yang diutarakan oleh pemohon adalah sesuatu yang tidak dapat disokong oleh apa-apa keterangan. Ia hanyalah merupakan suatu telahan yang dibuat berkenaan dengan tanah tersebut yang mempunyai kesan pembangunan ekoran daripada pembinaan landasan keretapi tersebut. Mahkamah mendapati tiada sebarang keterangan sokongan sama ada melalui dokumen ataupun kajian yang boleh menyokong tuntutan pihak pemohon dalam kes ini. Oleh itu mahkamah berpendapat perintah Pentadbir Tanah berkenaan kesan mudarat adalah dikekalkan iaitu sebanyak RM93,816.

PECAH PISAH (*SEVERANCE*)

[26] Penelitian kepada laporan penilai pemohon menyatakan bahawa terdapat kesan pecah pisah. Ini adalah disebabkan tanah tersebut telah dibahagikan kepada dua bahagian ekoran daripada pengambilan tanah ini. Laporan daripada JPPH juga menyatakan bahawa terdapat pecah pisah serta berlaku penyusutan nilai ekoran daripada pengambilan tanah ini di mana baki di bahagian A adalah berkeluasan 0.3878 hektar manakala baki bahagian B adalah 0.3940 hektar. Namun ia masih boleh diakses oleh pemohon disebabkan pembinaan landasan keretapi itu dibuat di atas jambatan. Ia membawa maksud tuan tanah masih mempunyai akses kepada tanah tersebut dengan melalui di bawah jambatan tersebut. Ia bukanlah keadaan di mana kedua-dua bahagian tanah tersebut tidak boleh langsung diakses oleh pemohon dan adalah dicadangkan bahawa jumlah yang diberikan adalah sebanyak 5%.

[27] Pengapit kerajaan telah menyatakan bahawa terdapat kewajaran untuk pampasan diberikan kepada pecah pisah tersebut disebabkan terdapatnya tanah baki sebanyak 0.7818 hektar dan Pentadbir Tanah telah memberikan kadar 20% di atas tanah baki seluas 0.7818 hektar tersebut pada nilai RM1.2 juta sehektar yang menjadikan jumlahnya RM187,632. Sementara itu pengapit swasta berpandangan bahawa pecah pisah tersebut perlu diberikan pampasan disebabkan terdapatnya penurunan nilai akibat pengambilan terhadap tanah tersebut disebabkan ia telah memisahkan tanah tersebut

kepada dua bahagian. Pengapit swasta bersetuju dengan jumlah award yang diberikan oleh Pentadbir Tanah iaitu sebanyak RM187,632.

[28] Mahkamah ini setelah meneliti dan menilai laporan penilai kerajaan dan penilai swasta serta pandangan pengapit kerajaan dan pengapit swasta di samping meneliti kedudukan tanah tersebut selepas daripada pengambilan tanah serta nilai yang diberikan oleh Pentadbir Tanah berkenaan dengan pecah pisah tersebut, mahkamah berpendapat tiada alasan untuk mahkamah tidak bersetuju dengan jumlah RM187,632 seperti yang diawardkan oleh Pentadbir Tanah. Ia adalah dikekalkan.

Perintah sewajarnya.

Dilaporkan oleh Nabilah Syahida Abdullah Salleh